



ALAN WILSON
ATTORNEY GENERAL

November 27, 2017

Jocelyn G. Boyd, Esq.
Chief Clerk and Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: Request to Submit Additional Authorities re: Due Process
Docket No. 2017-305-E

Dear Ms. Boyd:

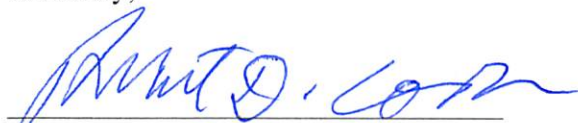
The Attorney General formally requests he be allowed to submit for consideration by the Commission several authorities discovered after submission of his Brief on November 21, 2017. These authorities relate to the discussion of the absence of Due Process in Section 58-33-280 of the BLRA. *See* Attorney General's Brief at pp. 65-67. We believe these authorities are relevant to the issues now before the Commission in the above matter. They are as follows:

1. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997) ("South Carolina Constitution article I, § 22 was added to the 1895 Constitution in 1970 'as a safeguard for the protection of liberty and property of citizens.' . . . Article I, § 22 requires an administrative agency . . . [to provide] notice and an opportunity to be heard at some point before the agency makes its final decision.") (internal citations omitted).
2. S.C. Code Ann § 58-33-285(E) (2015) ("Any filing under this section [for review of a revised rates order] must be considered a new proceeding")
3. *Arkansas Elec. Energy Consumers v. Arkansas Public Service Commission*, 813 S.W.2d 263, 273 (1991) ("A fundamental requirement of due process in matters of public utility regulation is a full and fair hearing.") (citing *Shields v. Utah Idaho Central Railroad Co.*, 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111 (1938)).
4. *Brown v. S.C. State Bd. of Ed.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867-68 (1990) ("Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. . . . We hold Reg. 43-59 unconstitutional because it does not provide for notice and an opportunity to be

heard when the State deprives a teacher of his or her teaching certificate.") (internal citations omitted).

5. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) ("Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. . . . Particularly where credibility and veracity are at issue . . . written submissions are a wholly unsatisfactory basis for decision.").
6. PSC Order No. 2013-514 (July 10, 2013) ("S.C. Code Sections 58-33-285(A) and 58-33-285(C) describe the procedure regarding intervention in requests for approval of revised rates under the Base Load Review Act. Based on these statutes, intervention can only occur by an aggrieved party within thirty days after the Commission issues a revised rates order. The statutes do not allow for intervention at the current time. Therefore, I move the Commission hold in abeyance the petitions of CMC Steel South Carolina . . . until such time as intervention is appropriate under the statute. However, Section 58-33-280(E) allows for the filing of written comments within one month of the filing of the Office of Regulatory Staff of its report indicating the results of its review and audit of the proposed revised rates. CMC Steel South Carolina may file comments pursuant to Section 58-33-280(E). CMC Steel must advise the Commission within thirty (30) days of issuance of the revised rates order as to whether it wishes to pursue its Petition to Intervene") (This is provided as a sample of many similar orders whereby the Commission is compelled to deny intervention in a revised rate proceeding by operation of Section 58-33-280 and Section 58-33-285 of the BLRA.).

Sincerely,



Robert D. Cook
Solicitor General
ATTORNEY FOR THE
STATE OF SOUTH CAROLINA EX REL.
ALAN WILSON, ATTORNEY GENERAL